United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

75-1142

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

T-4535

RENE TEXEIRA, FRANCIS TEXEIRA,
and JUSTINO TEXEIRA,

PETITIONER-APPELIANTS.

PETITIONER-APPELLANTS Pro Se BRIEF
ON APPEAL IN SUPPORT OF THEIR RULE
35 MOTION

BRIEF AND APPENDIX

DATED: June 2 1975.

Respectfully submitted,

Francis Texeira

Francis Texeira, 77733
PO Box PMB
Atlanta, Georgia 30315

FRANCIS TEXEIRA, on behalf of
himself and his two co-defendants,
RENE TEXEIRA, and JUSTINO TEXEIRA.

PAGINATION AS IN ORIGINAL COPY

INDEX TO BRIEF

CASES CITED

(Cases continued)

MISCELLANEOUS COMMENTATORS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

T-4535

RENE TEXEIRA, FRANCIS TEXEIRA,
and JUSTINO TEXEIRA,

PETITIONER-APPELLANTS.

PETITIONER-APPELLANTS Pro Se BRIEF ON APPEAL IN SUPPORT OF THEIR RULE 35 MOTION

QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court's mistatement of evidence, in its charge to the jury, denied the petitioners due process of law?

2. Whether the Government's failure to reveal to the jury the full extent of prosecutorial promises that were made to the key government witness violate controlling decisional law, from the Supreme Court, and petitioners rights under the due process clause to the Fifth Amendment?

3. Whether under the totality of circumstances test the petitioners were denied effective assistance of counsel as mandated by the Sixth Amendment?

PRELIMINARY STATEMENT

RENE TEXEIRA, FRANCIS TEXEIRA, and JUSTINO TEXEIRA, the petitioner-appellants herein, moved pro se on or about February 7, 1975, via Rule 35 of the Federal Rules Of Criminal Procedure seeking to correct, reduce, and/or modify sentences of 20 years, 15 years, and 20 years, respectively, imposed by the Honorable Kevin Thomas Duffy of the Southern District of New York, on September 4, 1973. Said sentences were rendered upon a jury verdict of guilty to a One Count indictment (73 Cr 509) for conspiracy to violate the narcotic laws.

On February 26, 1975, the district court denied the Rule 35 Motion without written opinion. Notice of Appeal was duly filed on March 5, 1975. Docketing fee was paid on or about April 2, 1975. The record on appeal was transmitted to this Court on April 15, 1975, and on May 22, 1975, a 15 day extension of time was sought by the petitioner-appellant, Francis Texeira, as well on behalf of his two co-defendants.

STATEMENT OF FACTS

The petitioners herein were indicted for One Count of conspiracy, i.e., Sections 173 and 174 of Title 21, United States Code. (73 Cr 509)

On June 26, 1973, jury trial commenced before Honorable Kevin Thomas Duffy, District Judge for the Southern District of

New York. The jury returned a guilty verdict and on September 4, 1973, the trial court imposed a sentence of twenty (20) years upon the petitioner Rene Texeira; Fifteen (15) years upon the petitioner Francis Texeira; and twenty (20) years upon the petitioner Justino Texeira.

Appeals to this Court were timely taken, and this Court affirmed from the bench without a written opinion (489 F.2d 753). Certiorari to the Supreme Court was sought and the petition was denied on October 15, 1974 (95 S.Ct. 43).

Subsequently, the petitioners submitted pro se motions via Rule 35 of the Federal Rules Of Criminal Procedure, seeking reductions of the sentences imposed. The petitioners predicated the thrust of their motion on four grounds. Only three embrace questions of law as opposed to a judge's discretion under Rule 35, i.e., that the trial court's instructions to the jury led them to believe that narcotics had been seized when in fact none had been seized, nor produced at the trial; that the full range of promises and criminal proclivities of the key Government witness, Pamela Ramirez, was not made known to the jury, by the Government; and that counsel was ineffective at the trial level for failing to develop these two areas and at the appellate level for failing to brief and argue as to the prejudice that flowed from the trial court's erroneous comments as to the nonexisting evidence.

ARGUMENT

POINT I

THE TRIAL COURT'S MISTATEMENT OF THE EVIDENCE MISLED THE JURY INTO BELIEVING THAT NARCOTICS HAD BEEN SEIZED, AND PROVIDED AN ERRONEOUS FACTUAL PREMISE UPON WHICH TO BASE ITS FINDINGS OF GUILT, IN VIOLATION OF THE DUE PROCESS CLAUSE TO THE FIFTH AMENDMENT

The petitioners have a justiciable controversy and invoke their due process right to a corrective remedy and to present the unconstitutional injury complained of. For "(t)he touchstone to justiciability is injury to a legally protected right..."(Justice Burton, In The Joint Anti-Fascist Case, 341 U.S. 123 140-141 (1951)).

In this setting the defendant-petitioners most respectfully submit that the attainment of justice is the purpose to which the entire intricate structure of jurisprudence is dedicated. Within this edifice sits a focal figure in whom is crystallized the essence of law and equity. This is the judge.

To the public mind and conscience the judge is the trustee of the assurance of justice. Indeed, he "stands as the symbol of evenhanded justice" (U.S. ex rel. Elksnis V. Gilligan, 256 F. Supp. 244 (S.D.N.Y. 1966), per Weinfeld, D.J.). Consequently, when this focal figure, while instructing the jury, erroneously mistates the evidence it becomes error of constitutional dimensions. (See Evans V. Wright, 505 F.2d 287, 290-291 (4th Cir. 1974);

Querica V. United States, 289 U.S. 466, 469 (1933).

It is axiomatic that a trial judge in charging and instructing the jury must adhere to the boundaries within which the trial testimonial evidence has evolved. Particular restraint must be exercised that the jury is not misled into believing that evidence has been seized that for some reason or other has not been produced but which, nevertheless, is in the prosecutor's possession--as attested to by the trial court's misleading comment. And there is no other area in the criminal field calling for more scrupulous adherence to this logic than in narcotic prosecutions where public passions are so easily enflamed to a high pitch of prejudice.

The case at bar was tried on a One Count conspiracy indictment that embraced the years of 1967 to 1971, inclusive. Not one milligram of narcotics (heroin) was ever seized nor introduced as evidence. In the face of this the trial court charged the jury that

> "The heroin found here has been illegally imported." (Trial Record, pp. 726-727, emphasis added. Hereinafter cited as T.R. See Rule 35 Motion to the lower court at p. 2)

While it is true that all counsel entered timely objections (T.R., pp. 746, 748, 750), it is equally true that none of the attorneys pursued this issue on appeal, and disregarded the petitioners expressed desire to present this issue on direct appeal. (See p.11 , infra.)

In United States V. Kahaner, 317 F12d 459, 479 , cert. den. 375 U.S. 835 (1963), This Court stated that:

> "The evidence, if stated at all, should be stated accurately, as well that which makes in favor of a party as that which makes against him;" (Citing Starr V. United States, 163 U.S. 614, 626, 14 S. Ct. 919, 38 L.Ed. 841 (1894))

This reasoning is also reflected in Billeci V. United States, 184 F.2d 394 (CA DC 1950):

> "A federal judge in a criminal case is not an inert figure. He is not a mere moderator. Besides his own exclusive functions of conducting the trial and declaring the applicable law, he may guide and assist the jury in its consideration of the evidence. The purpose of his comment is to aid, through his experience, the inexperienced layman in the box in finding the truth in the confusing conflicts of contradictory evidence. In exceptional cases he may even express his opinion upon the evidence, or phases of it. But there is a constitutional line across which he cannot go." (Id. at p. 402, emphasis added)

A manifest mistatement of the evidence cannot be deemed a "technical error" not affecting substantial rights. (Ballenbach V. United States, 326 U.S. 607, 66 S.Ct. 402, 90 L.Ed. 350 (1946)).

> "A conviction ought not to rest on an equivocal direction to the jury on a basic issue." (Id. at U.S. 614)

In England however "convincing may be the evidence adduced by the prosecution an error in the direction to the jury will result in the conviction being quashed whenever the mistake might

have influenced the jury." (Williams, The Proof of Guilt, 329, 330, 3rd edition 1963, emphasis added; but see United States V. Gillilan, 288 F.2d 796, 797 (2nd Cir. 1961), cert. den. 368 U.S. 821).

This is so because due process of law is not a highly technical concept whose purpose is to enable criminals to escape the penalties of the law. It is the very essence of the law, the essential method of doing justice and a great principle developed over a span of eight centuries to make sure that men shall live under the reign of law. Surely, the demands of due process cannot be aborted merely because the unconstitutional grievance complained of arose in the setting of a narcotics prosecution? To hold contrary would be a giant step backwards and diametrically opposed to this Court's admirable position in United States V. Miranti, 253 F.2d 135, i.e., that:

> "The constitution is for the despicable as well as the admirable."

POINT II

FAILURE TO REVEAL THE TRUE NATURE AND EXTENT OF PROMISES TO A KEY GOVERNMENT WITNESS DOES VIOLENCE TO THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

It is respectully submitted that the trilogy of Giglio V. United States (405 U.S. 150, 31 L.Ed.2d 104, 92 S.Ct. 763 (1972), DeMarco V. United States (415 U.S. 449, 39 L.Ed.2d 501, 94 S.Ct. 1185 (1974), and Ring V. United States (___U.S.___, 42 L.Ed.2d 29, 95 S.Ct. 163 (1974)) makes it incumbent upon the prosecutor to fully disclose the extent of all the promises made to the witness. It is not sufficient that he make a token effort as was done in the case at bar. To allow anything less than full disclosure is to emasculate the essence of due process reflected in the inherent principles of Giglio, DeMarco, and Ring, supra.

The emasculation of these principles is gleaned from the following colloquy that took place between the prosecutor, Jeffrey Harris, and the witness Pamela Ramirez:

> "Q Have any promises been made to you by the Government in return for your testimony?
>
> A Yes.
>
> Q What promises?
>
> A That my sister would not be prosecuted or my brother would not be prosecuted, and I would not be prosecuted.
>
> Q Was any other promise made to you?
>
> A Yes.

"Q What was that?

A That the sentencing judge would know of my cooperation.

Q Have any other promises been made?

A Yes." (T.R., pp. 39-40; emphasis added)

At this juncture the prosecutor, contrary to pursuing the nature of the promises as to his last question (which would have been consistent with his former inquiries as to same), conveniently asked the key witness an innocuous question regarding a phone number and closed his direct questioning.

Parenthetically, it should be noted that the prosecutor's failure to reveal the true extent of its promises, to the witness, by abruptly terminating direct, of necessity manifested an additional underlying prejudicial aspect, i.e., it induced the trial court to limit the scope of what could be argued.

Of course, in the case at bar, little or no effort was made by trial counsel to fully explore this area which taken with the first point of this appeal readily accentuates the ineffectiveness of counsel.

POINT III

THE TOTALITY OF CIRCUMSTANCES CLEARLY SUPPORT THE PETITIONERS ALLEGATIONS OF THE INEFFECTIVENESS OF COUNSEL AT THE APPELLATE LEVEL

The basic proposition that one accused of crime is entitled to effective assistance of counsel, whether privately retained or court appointed, is at this date an integral part of American jurisprudence and one whose acknowledgment has propelled us from the penumbra area of archaic principles into the illuminated zone of civilized concepts which in turn have revitalized and updated both the quality and direction of our juridicial tenets--by placing us at the threshold of surpassing past and present civilized nations in the handling of our citizens accused of crimes. (See Mosher V. LaVallee, 491 F.2d 1346 (2nd Cir. 1974); Arrastia V. United States, 455 F.2d 736, 739-740 (5th Cir. 1972); Fitzgerald V. Beto, 479 F.2d 420, 423 (5th Cir. 1973)).

The fiction of adhereing to old standards of conduct (shocking to the conscience) in gauging a claim of ineffective assistance of counsel appears to have been discarded for more meaningful and realistic concepts in Mosher, supra. Equally discarded is the puerile fiction that a privately retained attorney is immune from any attack bottomed on ineffectiveness; as well as the claim of measuring the prosecutor's case, strengthwise, against the claim of counsel's ineffectiveness. Which was the chief test in this Circuit. (See Marcelin V. Mancusi, 462 F.2d 36, 43 (1972)).

In this light the petitioners respectfully call to this Court's attention the highly germane fact that prior to review of their convictions on direct appeal notification was sent to their attorney wherein they urged the briefing and arguing of the contested trial judge's charge to the jury, as setforth hereinabove in Point I, page 5, supra. Unfortunately, counsel did not so do. Similarly, upon this Court's affirmance of the convictions, the petitioners attempted to bring this issue to this Court's attention by submitting timely, pro se, petition for rehearing and/or en banc reargument, which was denied by this Court.

In Arrastia V. United States (455 F.2d 736, 740 (5th Cir. 1972)) the Fifth Circuit Court of Appeals held that:

> "..The errors of retained counsel, even if made in good faith, can result in a denial of due process of law has been well established." (Citations omitted)

And in Fitzgerald V. Beto (479 F.2d 420, 423 (5th Cir. 1973)) that:

> "(T)he due process and equal protection clauses of the Fourteenth Amendment assure a state defendant effective representation by counsel whether attorney is one of his choosing or court appointed."

Consequently, it is incandescently clear that counsel's failure to fully develop, on appeal, the prejudicial impact of the trial court's prejudicial charge, in the face of petitioners clear instructions, aborted their constitutional rights to the effective assistance of counsel as mandated by the Sixth Amendment.

CONCLUSION

WHEREFORE, under the facts and the law the petitioners prayer for relief should be granted, insofar as this Court should reverse the order appealed from and grant whatever relief is appropriate in an appeal of this nature, consistent with the requirements of due process of law.

DATED: This 2 of June 1975.

Respectfully submitted,

Francis Texeira

Francis Texeira, #77733
Defendant-Petitioner pro se
PO Box PMB
Atlanta, Georgia 30315

Francis Texeira, on behalf of
himself and his two co-defendants,
Rene Texeira, and Justino Texeira.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

-against-

RENE TEXEIRA, FRANCIS TEXEIRA
and JUSTINO TEXEIRA,

DEFENDANT-PETITIONERS.

75-1142
T-4535

MOTION FOR PERMISSION TO FILE OUT
OF TIME BRIEFS

The defendant-petitioner, Francis Texeira, proceeding pro se, on behalf of himself as well as his two co-defendants respectfully moves this Court for permission to file out of time briefs. Said request is made pursuant to the suggestion of the Clerk's Office.

The Federal Rules Of Appellate Procedure, Rule 12(b), requires the clerk's office to "immediately give notice to all parties of the date on which the record was filed." This notice is to be given following timely transmittal from the district level, and the appellant then has 40 days to present briefs on appeal. This requirement of notice was not met in the case at bar.

A brief summary of the procedural history and time sequence of the instant case is necessary to a fair determination of whether the defendant-petitioners are to be saddled with the awesome sanctions of a procedural default.

On or about February, 1975, the defendants moved pro se on a Rule 35 Motion for the modification of sentence. An order denying relief was filed on February 26, 1975. Notice of Appeal was filed thereto on March 5, 1975, with the filing fee paid.

On April 2, 1975, the defendant-petitioners, via Francis Texeira, wrote to this Court:

"The $50 docketing fee will be forwarded to this office in a seperate letter from the undersigned's fiance.

Kindly inform me as to the time required for the filing of briefs in the above captioned matter after the receipt of the docketing fee." (Exhibit A, appended hereto, emphasis added).

No response was ever received from this Court.

On April 15, 1975, the defendant-petitioners' record on appeal was certified and transmitted to this Court, from the district level. (Exhibit B, appended hereto).

On May 21, 1975, the defendant-petitioner, Francis Texeira, via a notarized letter, moved this Court for "an additional fifteen (15) days extension of time in order to prepare the briefs on appeal". (Exhibit C, appended hereto).

On May 30, 1975, this Court mailed to the defendant-petitioner, Francis Texeira, a response to his May 21, 1975, letter requesting an extension of time, instructing him to append, to the briefs, a request for filing out of time and to submit 6 copies of the brief together with copies of the docket entries and the district court order. (Exhibit D, appended hereto). Unfortunately, the May 30th letter did not reach the institution until the evening of June 2, 1975; after the briefs on appeal had been submitted earlier that same day, i.e., June 2, 1975.

On June 3, 1975, the defendant-petitioner, Francis Texeira, wrote to this Court informing it that an original brief together with three copies of the briefs on appeal had been mailed to this Court with proof of service upon the government. And in compliance with the May 30th letter from this Court, via Ira P. Robbins, two more copies of the briefs were forwarded to this Court. At this time the defendant-petitioner complained that the May 30th letter referred to a docket No. 75-1142 and that as of March 17, 1975, he had been advised that his appeal docket number was T-4535 "and that I was to use this number in all future matters with this office of the Clerk and with my appeal." (Exhibit E, appended hereto). Permission was again sought to file out of time.

In the interim the defendant-petitioners were able to obtain a copy of the docket entries and the district court's opinion and they were forwarded to this Court on June 11, 1975. (Exhibit F, appended hereto).

Failing to receive a brief in opposition from the government attorney and/or acknowledgement from this Court, the defendant-petitioner, Francis Texeira again wrote to this Court on October 23, 1975, seeking to ascertain the status of his appeal. And on or about October 31, 1975, he received a letter from this Court, with enclosures, informing him that the pro se briefs on appeal have not been filed for failure to comply with the requests outlined in this Court's letters of May 30th and June 6, 1975. (Exhibit G, appended hereto).

The defendant-petitioners, now on motion, respectfully submit that they have complied fully and to the best of their limited ability with all of the requests made upon them. (See Exhibits E and F). They further submit that if because of institutional or postal error the additional required copies of the briefs on appeal, as well as the docket entries and the lower court opinion, were lost and did not arrive at this Court, that they should not be faulted. These are circumstances beyond their control. Nor should the docketing of their appeal be delayed any longer; nor should their appeal be dismissed as untimely. For as setforth above permission was duly sought for an extension of time (Exhibit C), and again sought for filing out of time (Exhibit E), albeit not with technical precision nor with the legal formalism of trained attorneys.

In support of the above, the defendant-petitioners invoke the protection that would be afforded to well-to-do litigants, as a matter of right, via the equal protection of the law and due process of law clauses to the Constitution. And further rely on the authority expounded by the Supreme Court, where the Court held that pro se pleadings are to be more liberally construed with "less stringent standards than formal pleadings drafted by lawyers" no matter how "inartfully pleaded,..." (Haines V. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594, 595 (1972)).

WHEREFORE, under the facts and the law the defendant-petitioners pray for the relief herein sought.

Respectfully submitted,

Francis Texeira

Francis Texeira
Defendant-Petitioner, pro se
PO Box PMB #77733
Atlanta, Georgia 30315

PROOF OF SERVICE
BY MAIL

STATE OF GEORGIA)
) SS:
COUNTY OF FULTON)

FRANCIS TEXEIRA, after being duly by law sworn, deposes and says: That on the behalf of himself and his two co-defendants he has this 14th day of November 1975, submitted copies of the instant papers to the Parole Officer named below for the purpose of mailing same to Paul Curran, United States Attorney for the Southern District of New York. All of which should constitute sufficient proof of service.

Yours etc.,

Francis Texeira

Francis Texeira #77733

Sworn to before me this
14th day of November 1975.

Joel H. Knowles

Parole Officer authorized by the Act of June 7, 1955 to administer Oaths (18 U.S.C.

A

April 2, 1975

A. Daniel Fusaro, Clerk
U.S. Court Of Appeals, Second Circuit
U.S. Courthouse--Foley Square
New York, New York State 10007

Re: U.S. V. Rene Texeira, etc., et al.
C/A Ref. No. T-4535

Dear Sir:

The $50 docketing fee will be forwarded to this office in a seperate letter from the undersigned's fiance.

Kindly inform me as to the time required for the filing of briefs in the above captioned matter after receipt of the docketing fee.

Thanking you in advance. I am

Very truly yours,

Francis Texeira

Francis Texeira, 77733

CC: Ms. Florence Rodriguez
1230-D Morrison Avenue
Bronx, New York

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
U. S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N. Y. 10007

RAYMOND F. BURGHARDT
CLERK

MR. FRANCIS TEXEIRA
BOX PMB
ATLANTA, GA. 30315

DATE: APRIL 15-75

RE: DOCKET NO. 73 cr. 509 KTD

U.S.A. vs RENE TEXEIRA, etal.

Dear Sir:

Please be advised that we have this day certified and transmitted the record on appeal in the above-entitled proceeding to the United States Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, New York, N.Y. 10007.

Any further request for information concerning your appeal should be directed to the United States Court of Appeals.

Very truly yours,

RAYMOND F. BURGHARDT,
Clerk.

By: E. Aponte

EDDIE APONTE
Orders and Appeals Clerk.

c.c.
PRO SE CLERK
ORDERS AND APPEALS FILE

C

May 21, 1975

A. Daniel Fusaro, Clerk
U.S. Court Of Appeals Second Circuit
U.S. Courthouse--Foley Square
New York, New York State 10007

Re: United States V. Texeira, et al.
Docket No. T-4535

Dear Sir:

Notice as to the certification and transmittal of the record on appeal to the above captioned matter was received by the undersigned on or about April 18, 1975. The notification was mailed under date of April 15, 1975. However, due to the inadequacy of the law library, here at Atlanta Penitentiary, I most respectfully request an additional fifteen (15) days extension of time in order to prepare the briefs on appeal to the above captioned appeal.

Hoping to receive a prompt reply. I am

Very truly yours,

Francis Texeira

Francis Texeira, #77733

CC:

5/22/75

Parole Officer: Authorized by the Act of July 7, 1955 to Administer Oaths 18 U.S.C. 4004.

D

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

A. DANIEL FUSARO
CLERK

May 30, 1975

Francis Texeira
77733
Box PMB
Atlanta, Ga. 30315

Re: 75-1142

Dear Sir:

This will acknowledge receipt of your letter dated May 21, 1975.

Please be advised that this Court is more understanding of the problems facint pro se appellants, so that a formal motion for an extension of time is unnecessary. It is suggested, however, that you append to your briefs a request for filing them out-of-time. This Court must have 6 copies of your brief, and the appendix must consist in the least of a copy of the district court order as well as a serox copy of the docket entries. Please serve a copy of your brief and appendix on the United States Attorney with proof of service to this Court.

We hope that this information will be helpful.

Sincerely,

Ira P. Robbins

IPR/opv

Ira P. Robbins
pro se law clerk

E

June 3, 1975

A. Daniel Fusaro, Clerk
United States Court Of Appeals
Second Circuit
U.S. Courthouse--Foley Square
New York, New York State 10007

Re; United States V. Texeira
Docket No. T-4535
So. Dist. 73 Cr 509

Dear Sir:

- On June 2, instant, I mailed one original and three copies of briefs on appeal to the above captioned matter to this court with proof of service upon the Government. However, I have just received a letter from this office from Ira P. Robbins, pro se law clerk, informing me that I have to submit 6 copies of my brief. Enclosed herein are two carbon copies of said briefs which will comply with this office's request. There is no appendix to the brief nor do I have a copy of the docket entries in my possession.

Mr. Robbins letter of May 30, 1975, refers to a docket No. 75-1142. This is the first time that I have seen this docket No. in regards to my appeal. As of March 17, 1975, I was advised by this office that my docket number was T-4535, and that I was to use this number in all future matters with this office of the Clerk and with my appeal.

Consistent with Mr. Robbins letter of May 30, 1975, I again request permission to file out of time.

Very truly yours,

Francis Texeira

Francis Texeira, #77733

CC:
Enc.

F

June 11, 1975

A. Daniel Fusaro, Clerk
United States Court Of Appeals
Second Circuit
U.S. Courthouse--Foley Square
New York, New York State 10007

Re: United States V. Texeira
Docket No. T-4535 75-1142

Sir:

Enclosed herein are the only copies in my possession as to the docket entries in the above captioned matter as well as the lower court's opinion, which I am sending to you in compliance to your requests of May 30, 1975, and June 6, instant.

Hoping that everything is now in order, I remain

Very truly yours,

Francis Texeira, # 17733

CC:
Enc.

G-1

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

A. DANIEL FUSARO
CLERK

October 28, 1975

Francis Texeira
77733
Box PMB
Atlanta, Ga. 30315

Re: 75-1142

Dear Sir:

This will acknowledge receipt of your letter dated October 23, 1975.

Enclosed please find xerox copies of our letters dated May 30 and June 6, 1975. We are still awaiting compliance with the request in the May 30 letter underlined in red. We are unable to file your briefs without these materials. We strongly suggest that you append a motion for leave to file your briefs out-of-time when you supply the Court with the requested documents.

We hope that this information will prove helpful.

Sincerely,

Susan N. Herman

Susan N. Herman
pro se law clerk

SNH/opv
encls.

G-2

May 30, 1975

Francis Texeira
77733
Box PMB
Atlanta, Ga. 30315

Re: 75-1142

Dear Sir:

This will acknowledge receipt of your letter dated May 21, 1975.

Please be advised that this Court is more understanding of the problems facing pro se appellants, so that a formal motion for an extension of time is unnecessary. It is suggested, however, that you append to your briefs a request for filing them out-of-time. This Court must have 6 copies of your brief, and the appendix must consist in the least of a copy of the district court order as well as a Xerox copy of the docket entries. Please serve a copy of your brief and appendix on the United States Attorney with proof of service to this Court.

We hope that this information will be helpful.

Sincerely,

IPR/opv

Ira P. Robbins
pro se law clerk

G-3

June 6, 1975

Francis Texeira
77733
Box PMB
Atlanta, Ga. 30315

Re: 75-1142

Dear Sir:

This will acknowledge receipt of your papers dated June 2, 1975.

It would appear that our letter of May 30, 1975 (a copy of which is attached) crossed with your documents. Please notice the portion of paragraph two bracked in red. We will retain your papers in our files awaiting compliance with the above request.

Sincerely,

SNH/opv
encl.

Susan N. Herman
pro se law clerk

For U.S Assistant Attorney
Jeffrey Harris